



**Billing Code: 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

**[Docket No. 190917-0030]**

**RIN 0648-BJ02**

**Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod Management in the Groundfish Fisheries of the Bering Sea and Aleutian Islands and the Gulf of Alaska**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement Amendment 120 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands (BSAI) Management Area (BSAI FMP) and Amendment 108 to the FMP for Groundfish of the Gulf of Alaska (GOA) (GOA FMP), collectively referred to as Amendments 120/108. If approved, Amendment 120 would limit the number of catcher/processors (C/Ps) eligible to operate as motherships receiving and processing Pacific cod from catcher vessels (CVs) directed fishing in the BSAI non-Community Development Quota Program (CDQ) Pacific cod trawl fishery. This proposed rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), Amendments 120/108, the BSAI and GOA FMPs, and other applicable laws.

**DATES:** Submit comments on or before [*INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments on this document, identified by FDMS Docket Number NOAA–NMFS–2019-0060, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2019-0060*, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Records Office. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 120 to the BSAI FMP, Amendment 108 to the GOA FMP, the Regulatory Impact Review (RIR; also referred to as the Analysis) and the draft National Environmental Policy Act (NEPA) Categorical Exclusion evaluation document may be obtained from *www.regulations.gov*. Electronic copies of Amendments 39, 61, 80, 97, and 111 to the BSAI FMP, and the Environmental Assessments (EAs)/RIRs prepared for those actions may be obtained from *www.regulations.gov*.

Written comments regarding the burden-hour estimates or other aspects of the collection-

of-information requirements contained in this rule may be submitted by mail to NMFS at the above address; and by e-mail to *OIRA\_Submission@omb.eop.gov* or by fax to 202–395–5806.

**FOR FURTHER INFORMATION CONTACT:** Bridget Mansfield, 907-586-7228.

**SUPPLEMENTARY INFORMATION:**

**Authority for Action**

NMFS manages the groundfish fisheries in the exclusive economic zone of the BSAI and GOA under the BSAI and GOA FMPs, respectively. The North Pacific Fishery Management Council (Council) prepared the BSAI and GOA FMPs under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the BSAI and GOA FMPs appear at 50 CFR parts 600 and 679.

This proposed rule would implement Amendments 120/108 to the BSAI and GOA FMPs, respectively. The Council submitted Amendments 120/108 for review by the Secretary of Commerce (Secretary), and a Notice of Availability (NOA) of Amendments 120/108 was published in the **Federal Register** on August 21, 2019, with comments invited through October 21, 2019. Comments submitted on this proposed rule by the end of the comment period (See **DATES**) will be considered by NMFS and addressed in the response to comments in the final rule. Comments submitted on this proposed rule may also address Amendments 120/108. However, all comments addressing Amendments 120/108 must be received by October 21, 2019, to be considered in the approval/disapproval decision on Amendments 120/108. Commenters do not need to submit the same comments on both the NOA and this proposed rule. All relevant written comments received by October 21, 2019, whether specifically directed to the FMP amendments, this proposed rule, or both, will be considered by NMFS in the approval/disapproval decision for Amendments 120/108 and addressed in the response to

comments in the final rule.

## **Background**

In April 2019, the Council voted to recommend Amendments 120/108 to require that a C/P acting as a mothership receiving deliveries of BSAI non-CDQ Pacific cod from CVs directed fishing with trawl gear must be designated on a groundfish LLP license with a “BSAI Pacific cod trawl mothership endorsement.” Directed fishing is defined as any fishing activity that results in retention of an amount of a species on board a vessel that is greater than the maximum retainable amount for that species (see definition at 50 CFR 679.2). The term “mothership”, as defined at § 679.2, means a vessel that receives and processes groundfish from other vessels. As included in the regulatory text and discussed in the preamble of this proposed rule, the term “BSAI Pacific cod trawl mothership endorsement” refers to an endorsement on a groundfish LLP license that would allow the C/P vessel designated on that groundfish LLP license to operate as a mothership and receive and process catch of Pacific cod in the BSAI non-CDQ Pacific cod trawl CV directed fishery. This proposed rule would establish the eligibility criteria and issuance process for this new endorsement. C/Ps not designated on groundfish LLP licenses will be prohibited from participating in the BSAI non-CDQ Pacific cod trawl directed fishery as a mothership. “BSAI non-CDQ Pacific cod trawl CV directed fishery” is defined at § 679.2 as the fishery in which CVs are directed fishing for BSAI non-CDQ Pacific cod allocated to the CV trawl sector, as specified at § 679.20(a)(7)(ii)(A).

To implement Amendments 120/108, NMFS would issue a BSAI Pacific cod trawl mothership endorsement to a groundfish LLP license with Bering Sea or Aleutian Islands area and C/P operation endorsements if the groundfish LLP license had an Amendment 80 or non-Amendment 80 C/P designated on it, and the groundfish LLP license is credited with receiving

and processing a mothership trip target of Pacific cod in the BSAI non-CDQ Pacific cod trawl CV fishery in each of the qualifying years 2015 through 2017 (qualifying period). The Council noted its intent, and Section 2.6.10 of the Analysis specifies, that qualification for a C/P to operate as a mothership should be based on the history of that vessel receiving deliveries of targeted non-CDQ BSAI Pacific cod harvested by CVs using trawl gear during each year in the qualifying period. This proposed rule defines the term “mothership trip target” as, in the aggregate, the groundfish species that is delivered by a CV to a given C/P operating as a mothership in an amount greater than the retained amount of any other groundfish species delivered by the same CV to the same C/P for a given week. For those C/Ps that received and processed at least one mothership trip target of Pacific cod in the BSAI non-CDQ Pacific cod trawl CV fishery in each year of the qualifying period, only one groundfish LLP license on which the vessel was designated during the qualifying period would be eligible to receive the BSAI Pacific cod trawl mothership endorsement. Further, Amendments 120/108, if approved by the Secretary, would prohibit all Amendment 80 C/Ps not designated on an Amendment 80 QS permit and an Amendment 80 LLP license, or not designated on an Amendment 80 LLP/QS license, from receiving and processing Pacific cod harvested in directed fishing for Pacific cod in the BSAI and GOA.

The following sections of this preamble provide a brief description of 1) the LLP, the BSAI Pacific cod trawl CV fishery, and related management programs; 2) the need for this proposed rule; 3) the proposed eligibility criteria and process for obtaining the new endorsement authorizing receipt and processing of Pacific cod in the BSAI non-CDQ Pacific cod trawl CV directed fishery; and 4) the prohibition on replaced Amendment 80 C/Ps from receiving and processing Pacific cod harvested by directed fishing in the BSAI and GOA Pacific cod fisheries.

## **Description of the License Limitation Program, the BSAI Pacific Cod Trawl Catcher Vessel Fishery, and Related Management Programs**

### *License Limitation Program (LLP)*

The Council and NMFS have long sought to control the amount of fishing effort in the BSAI groundfish fisheries to ensure that the fisheries are sustainably managed and do not exceed established biological thresholds. One of the measures used by the Council and NMFS to control fishing effort is the LLP, which limits access to the groundfish fisheries in the BSAI. The LLP is intended to prevent unlimited entry into groundfish fisheries managed under the BSAI FMP. With some limited exceptions, the LLP requires that persons hold a groundfish LLP license and have designated on a groundfish LLP license each vessel that is used to fish in federally managed groundfish fisheries.

NMFS published the final rule to implement the LLP for BSAI groundfish fisheries on October 1, 1998 (63 FR 52642), and fishing under the requirements of the LLP began on January 1, 2000. The preamble to the final rule implementing the BSAI groundfish LLP and the EA/RIR prepared for that action describe the rationale and specific provisions of the LLP in greater detail (see **ADDRESSES**) and are not repeated here.

The key components of the LLP are briefly summarized as follows. The BSAI groundfish LLP established specific criteria to allow a vessel to receive a groundfish LLP license and continue to be eligible to fish in groundfish directed fisheries managed under the BSAI FMP. Vessels under 32 feet length overall (LOA) in the BSAI, and vessels using jig gear in the BSAI that are less than 60 feet LOA and that deploy no more than five jigging machines are exempt from the requirements to have a groundfish LLP license.

Under the LLP, NMFS issued licenses that 1) endorse fishing activities in specific

regulatory areas in the BSAI; 2) restrict the length of the vessel on which the LLP license may be used; 3) designate the fishing gear that may be used on the vessel (*i.e.*, trawl or non-trawl gear designations); and 4) designate the type of vessel operation permitted (*i.e.*, specify whether the vessel designated on the LLP license may operate as a CV, a C/P, or as a mothership). LLP licenses are issued so that the endorsements for specific regulatory areas, gear designations, and vessel operational types are non-severable from the LLP license (*i.e.*, once issued, the components of the LLP license cannot be transferred independently). Individual LLP licenses are derived from historical fishing activity in one area with a specific fishing gear or operational type. By creating LLP licenses with these characteristics, the Council and NMFS limited the ability of a person to use an assigned LLP license in other areas, with other gear, or for other operational types. The Council's intent in applying such limitations was to curtail the ability of the LLP license holder to expand fishing capacity, which could decrease the benefits derived by the existing participants from those other fisheries.

In order to receive a BSAI groundfish LLP license, a vessel owner had to meet minimum landing requirements with the vessel during a specific time frame. Specifically relevant to this proposed rule, a vessel owner received a BSAI groundfish LLP license endorsed for a specific regulatory area in the BSAI, if that vessel met specific harvesting and landing requirements for that specific regulatory area during the qualifying periods established in the final rule implementing the LLP (63 FR 52642, October 1, 1998). A groundfish LLP license with a CV operation endorsement allows a vessel to catch but not process its catch at-sea; a groundfish LLP license with a C/P endorsement allows a vessel to harvest and process its own catch at-sea or to act as a mothership to process catch harvested and delivered by a CV. As an example, in order to receive a groundfish LLP endorsed for trawl gear in the Aleutian Islands with a C/P

designation, a vessel must have met the minimum groundfish harvesting and landing requirements for the Aleutian Islands using trawl gear during the qualifying period, and must have processed the qualifying catch on board the vessel. Section 2.6.9 of the Analysis provides additional details on the LLP.

*Effects of the American Fisheries Act, Amendment 80, and Amendment 85 on BSAI Pacific Cod Fisheries*

This proposed rule would modify regulations governing the deliveries of Pacific cod in the BSAI to vessels operating as motherships. The vessels primarily affected by this proposed rule are managed under three management regimes, the American Fisheries Act (AFA) Program, the Amendment 80 Program, and the allocation of Pacific cod to the BSAI trawl catcher vessel sector that was implemented under Amendment 85 to the BSAI FMP. Each of these three management regimes is described in additional detail below.

NMFS published the final rule to implement the American Fisheries Act (AFA) (BSAI FMP Amendment 61), on December 30, 2002 (67 FR 79691). The preamble to the final rule implementing the AFA and the EA/RIR prepared for that action describe the rationale and specific provisions of the AFA in greater detail (see **ADDRESSES**) and are not repeated here. Along with other measures, implementation of the AFA granted AFA vessel owners fixed percentages of the available BSAI pollock TAC after deductions for the CDQ fishery and the incidental catch allowances for other fisheries. The allocation of pollock provided the AFA fleet the ability to effectively consolidate and improve the efficiency of their Bering Sea pollock operations. Opportunities for these vessel owners to expand into other fisheries that would not otherwise have been available were a potential result. To limit these expansions, the AFA created harvesting limits, known as sideboards, on AFA vessels in non-pollock fisheries to



protect vessels and processors in other, non-pollock fisheries from spillover effects resulting from the rationalization and privatization of the BSAI pollock fishery. One of the groundfish directed fisheries limited by the sideboard limits was Pacific cod. The original Pacific cod sideboards applicable to AFA vessels have been revised, beginning in 2008 with the implementation of the Amendment 80 Program.

The Amendment 80 Program was implemented in 2008 (72 FR 52668, September 14, 2007). The preamble to the final rule implementing the Amendment 80 Program and the EA/RIR prepared for that action describe the rationale and specific provisions of Amendment 80 in greater detail (see **ADDRESSES**) and are not repeated here. Amendment 80 identified groundfish trawl C/Ps that were not covered by the AFA (*i.e.*, the head-and-gut fleet or Amendment 80 vessels) and established a framework for future fishing by this fleet. Along with other measures, Amendment 80 allocated six BSAI non-pollock groundfish species among two trawl fishery sectors. The six species, known as “Amendment 80 species,” include Aleutian Islands Pacific ocean perch, BSAI Atka mackerel, BSAI flathead sole, BSAI Pacific cod, BSAI rock sole, and BSAI yellowfin sole. These species are allocated for harvest among the Amendment 80 sector’s participants, comprised of specific trawl vessels identified under Amendment 80, and all other BSAI trawl fishery participants not in the Amendment 80 sector. The other BSAI trawl fishery participants include AFA C/Ps, AFA CVs, and non-AFA CVs. Collectively, this group of other, or non-Amendment 80, BSAI trawl fishery participants comprises the BSAI trawl limited access sector (TLAS), defined at 50 CFR 679.2.

Each year, NMFS allocates the initial total allowable catch (ITAC) of the six Amendment 80 species, as well as crab and halibut prohibited species catch (PSC) limits, between the Amendment 80 sector and the BSAI TLAS. Allocations made to the Amendment 80 sector are

exclusive to the Amendment 80 sector and not subject to harvest in other fishery sectors. The Amendment 80 sector is precluded from harvesting Amendment 80 species allocated to the BSAI TLAS. The Council's intent in establishing the BSAI TLAS was to provide harvesting opportunities for AFA C/Ps, AFA CVs, and non-AFA CVs. The ITAC represents the amount of total allowable catch (TAC) for each Amendment 80 species that is available for harvest after allocations to the CDQ Program and the incidental catch allowance (ICA) have been subtracted.

The ICA is an amount set aside for the incidental harvest of each Amendment 80 species by non-Amendment 80 vessels targeting other groundfish species in non-trawl fisheries and in the BSAI TLAS fisheries. BSAI Pacific cod ITAC (non-CDQ) for trawl gear is allocated to the Amendment 80, AFA C/P, and trawl CV sectors separately, which is why the Pacific cod AFA C/P and trawl CV sector allocations are not collectively referred to as the BSAI TLAS fishery. The annual proportion of BSAI Pacific cod ITAC (non-CDQ) allocated to the sectors depends on the amount at which the Pacific cod ITAC is set. The Pacific cod ITAC allocated to the trawl CV sector is divided between the Aleutian Islands subarea and the Bering Sea subarea. An allocation to a non-CDQ fishery sector may be harvested in either the Bering Sea or the Aleutian Islands, subject to the Pacific cod ITAC specified for the Bering Sea or the Aleutian Islands. If the Pacific cod ITAC is or will be reached in either the Bering Sea or Aleutian Islands, NMFS will prohibit directed fishing for Pacific cod in that subarea for all non-CDQ fishery sectors.

Although the Council was clear in its intent to prohibit Amendment 80 vessels from harvesting Amendment 80 species allocated to the BSAI TLAS, the Council did not specifically address during its development of Amendment 80 whether Amendment 80 vessels should be eligible to serve as processing platforms for other fishery sectors. As noted earlier in this preamble, a vessel that receives and processes groundfish from other vessels is referred to as a

“mothership.” Although Amendment 80 vessels operate as C/Ps (*i.e.*, the vessels catch and process their own catch) in the Amendment 80 sector, Amendment 80 vessels meet the regulatory definition of a mothership when they receive and process catch from CVs fishing in other fisheries.

The final rule implementing Amendment 80 clarified that Amendment 80 vessels could be used as motherships for CVs fishing in other BSAI trawl fisheries, based on public comments received on the proposed rule (72 FR 30052, May 30, 2007), further analysis by NMFS, and the lack of clearly stated Council intent to the contrary. The final rule implementing Amendment 80 modified the proposed regulations to permit this activity, noted that this revision accommodated one Amendment 80 C/P that had historically been used as a mothership, and acknowledged that the revision provided for potential future growth in the use of Amendment 80 vessels as motherships in the BSAI TLAS fisheries. A detailed description of the Council’s intent and NMFS’ actions regarding limitations of Amendment 80 vessels catching, receiving, and processing fish assigned to the BSAI TLAS fisheries is provided in the proposed and final rules implementing Amendment 80.

Under Pacific cod allocations prior to the final rule implementing BSAI FMP Amendment 85 (72 FR 50787, September 4, 2007), one or more harvest sectors were often unable to harvest their annual allocation of the BSAI non-CDQ Pacific cod TAC. To provide opportunities for full harvest, NMFS annually reallocated Pacific cod projected to be unharvested by some sectors to other sectors. To reduce or eliminate the need for such reallocations, Amendment 85 established direct allocations and seasonal apportionments of BSAI Pacific cod TAC for each specified sector in the BSAI Pacific cod fishery. This change reduced annual uncertainty about harvest availability within sectors and increased stability

among sectors in the fishery. Because the allocation to each sector is fixed, and NMFS does not reallocate unused catch to trawl CPs in most cases, trawl C/Ps may have an incentive to engage in mothership operations to increase Pacific cod processing.

*Increased Mothership Activity in the BSAI Non-CDQ Pacific Cod Trawl CV Directed Fishery*

In 2017 the Council noted an increase in mothership activity since 2016 in the BSAI non-CDQ Pacific cod trawl CV directed fishery. This increased mothership activity was linked to trawl CVs delivering to C/Ps operating as motherships thereby decreasing Pacific cod landings at BSAI shoreside processing facilities. Table 2-29 in the Analysis for this action shows the rapid increase of the amount of Pacific cod harvested in the BSAI non-CDQ Pacific cod trawl CV directed fishery and delivered to C/Ps acting as motherships in recent years. Section 2.7.1 of the Analysis noted that, from 2003 through 2015, four unique C/Ps operated as motherships in the fishery, with one to three such vessels participating in any one year. One of the four C/Ps participating from 2003 through 2015 acted as a mothership in the fishery during one of those 13 years, and one acted as mothership in the fishery during three of the 13 years. Of the remaining two C/Ps, one participated as a mothership in the fishery 10 of 13 years, and the other participated as a mothership in the fishery 12 of 13 years. In 2016 and 2017, the number of C/Ps acting as motherships in the fishery jumped substantially to eight vessels, and increased again to nine vessels in 2018.

Section 2.7.1 of the Analysis noted that in 2018, 174 groundfish LLP licenses had a trawl endorsement for either the Bering Sea area or the Aleutian Islands area. A C/P endorsement is assigned to 59 of those licenses, and a CV endorsement is assigned to the remaining 115 licenses. The groundfish LLP licenses also identify whether the groundfish LLP license is associated with either the Amendment 80 or AFA programs. Twenty-six of the C/P groundfish

LLP licenses are associated with Amendment 80, while 27 groundfish LLP licenses are associated with AFA C/Ps. Under current regulations, any of the 50 C/Ps not currently active in the fishery with a trawl endorsement for either the Bering Sea area or the Aleutian Islands area could enter the fishery as a mothership, if they have the proper Federal Fisheries Permit and endorsement and meet any other regulatory requirement to act as a mothership. The nine Amendment 80 C/Ps and AFA C/Ps that are active as motherships in the fishery could maintain or increase the percentage of the trawl CV sector allocation they process.

The Council noted that, as a result of increased mothership availability, the number of trawl CVs in the offshore fishery has increased. This is true particularly in the fishery's A season, when the majority of BSAI non-CDQ Pacific cod trawl CV allocation is harvested. Table 2-29 in Section 2.7.1 of the Analysis indicates that an average of 4.7 CVs in this fishery delivered Pacific cod to C/Ps acting as motherships from 2006 through 2014, compared to an average of 9 CVs from 2015 through 2017. The number of CVs in the fishery delivering to C/Ps acting as motherships continued to increase in the A season in 2018 and 2019, with 11 and 13 CVs, respectively.

A corresponding decline in deliveries to shoreside processors occurred during the same period. Eighteen different shoreside or floating processing entities took deliveries of Pacific cod from either the Bering Sea or Aleutian Islands during 2009 through 2018 (Section 2.6.14.4 of the Analysis). In any one year the number of shoreside processors that operated ranged from 10 to 13. Just under 93 percent of non-CDQ Pacific cod targeted in the Bering Sea was delivered to shoreside and other non-C/P processors from 2008 through 2018 by trawl CVs. Deliveries to that sector decreased to approximately 87 percent in 2017 and 79 percent in 2018, which the Council noted represented a substantial departure from historical delivery patterns. In

comparison, in the Bering Sea from 2008 through 2018 deliveries to C/Ps acting as motherships averaged 7.2 percent of overall landings including deliveries to shoreside and floating processors. The proportion of CV deliveries to C/Ps operating as motherships was much higher than that average in 2017 (12.7 percent) and higher yet in 2018 (20.8 percent). In the 2019 A season, the proportion of CV deliveries to C/Ps operating as motherships was 30.5 percent. These increases are occurring as the overall BSAI TAC is declining, contributing to a faster-paced fishery.

The potential exists for additional motherships and CVs delivering to motherships to participate in the BSAI non-CDQ Pacific cod trawl CV directed fishery. There are no current constraints on C/Ps operating as motherships in the BSAI non-CDQ Pacific cod trawl CV directed fishery as long as they hold the required permits or licenses. Section 2.7.1 of the Analysis provides information indicating that up to 46 additional Amendment 80 or AFA C/Ps could enter the BSAI non-CDQ Pacific cod trawl CV directed fishery as motherships based on a range of factors. These motherships could provide processing capacity for a substantial number of additional CVs. CVs are not limited in the amount of Pacific cod from the available allocation to the BSAI non-CDQ Pacific cod trawl CV directed fishery that they can delivery to C/Ps. These estimates likely represent the maximum potential expansion of mothership processing capacity in the BSAI non-CDQ Pacific cod trawl CV directed fishery, although that maximum would likely not be realized for a number of reasons. Section 2.7.1 of the Analysis provides additional details on the potential for new C/Ps operating as motherships and for CVs to enter the BSAI non-CDQ Pacific cod trawl CV directed fishery.

### **Need for Action**

Given the recent sharp increases in offshore deliveries in the BSAI non-CDQ Pacific cod

trawl CV directed fishery to C/Ps operating as motherships and the potential for future growth in offshore deliveries, the Council identified two primary management concerns that it wanted to address with Amendments 120/108: 1) the likelihood of decreasing benefits from the fishery for long-time participants, including some C/Ps, shoreside processors, and communities dependent on those shoreside processors; and 2) negative impacts of a faster paced fishery, such as the increased risk of a “race for fish.” The Council noted the increase in mothership deliveries in the fishery was disrupting historical distribution patterns resulting in, and increasing the potential to have further, negative impacts on long-time participants with sustained activity in the fishery, including C/Ps operating as motherships, shoreside processors, and communities with local economies dependent on revenue and jobs created by the shoreside processors. The Council was concerned that the increase in offshore deliveries may have resulted in slightly shorter fishing seasons due to the faster pace of the fishery, negatively affecting PSC rates and vessel safety.

The Analysis (Section 2.8.2) noted that safety issues associated with compressed seasons and crowding of premium fishing areas could be made worse as more vessels enter the fishery. Public testimony has indicated that crowding may already be occurring on Bering Sea fishing grounds, where vessels are required to queue up to begin fishing for Pacific cod. Additional effort in the fishery could increase queue times and increase the risks that vessel operators are willing to take. Shorter fishing seasons may affect vessel safety as the race for fish intensifies; fish quality may suffer as Pacific cod is rushed through factory processing; global markets may respond with lower prices if large volumes of lower quality Pacific cod oversaturate markets; and local economies may receive less revenue as landings to shoreside processors, upon which associated communities have historically been dependent, continue to erode. The Council also expressed concern that recent declines in available trawl CV sector allocations of BSAI Pacific

cod, noted in Section 2.6.2 of the Analysis and potential future declines could exacerbate these other problems in the fishery.

In order to address these concerns, the Council determined, and NMFS agrees, that management measures are needed to limit the offshore processing capacity in the BSAI non-CDQ Pacific cod trawl CV directed fishery. The Council also determined that any Amendment 80 C/P that was replaced under BSAI Amendment 97 (77 FR 59852; October 1, 2012) should be prohibited from operating as a mothership in the fishery. The Council recommended, and NMFS proposes two preferred alternatives for Amendment 120 and one for Amendment 108 to implement those management measures. The first preferred alternative under Amendment 120 would implement eligibility criteria for a groundfish LLP license to receive a mothership endorsement authorizing a C/P designated on that groundfish LLP license to operate in the BSAI non-CDQ Pacific cod trawl CV directed fishery as a mothership and receive and process deliveries of Pacific cod from CVs using trawl gear in the fishery. The Council considered two separate eligibility options: one for groundfish LLP licenses on which Amendment 80 C/Ps are designated and one for groundfish LLP licenses on which non-Amendment 80 C/Ps are designated. For groundfish LLP licenses on which Amendment 80 C/Ps are designated, the Council recommended the most restrictive sub-option of the three evaluated in the Analysis. This sub-option stipulates that groundfish LLP licenses on which Amendment 80 C/Ps are designated would be eligible for a mothership endorsement only if the groundfish LLP license has been credited with receiving at least one mothership trip target of Pacific cod in the BSAI non-CDQ Pacific cod trawl CV directed fishery in each year from 2015 through 2017.

The second option, addressing eligibility for groundfish LLP licenses on which non-Amendment 80 C/Ps are designated, was evaluated in Section 2.4.2 of the Analysis. Because



only one groundfish LLP license on which a non-Amendment 80 C/P is designated would qualify under any of the eligibility sub-options considered for groundfish LLP licenses on which Amendment 80 C/Ps are designated, the Council initially noted that sub-options need not be considered for groundfish LLP licenses on which non-Amendment 80 C/Ps are designated in the Analysis. As a result, the Council recommended adopting the only option for eligibility for groundfish LLP licenses on which non-Amendment 80 C/P are designated. That option specified that “a catcher/processor may take directed fishery deliveries of Pacific cod from catcher vessels participating in the Bering Sea (BSAI) non-CDQ Pacific cod trawl CV fishery if the catcher/processor acted as a mothership and received targeted Pacific cod deliveries as follows: Non-Amendment 80 vessels acting as a mothership during 2015-2017.” However, in discussion during final action, the Council clarified its intent that a groundfish LLP license on which a non-Amendment 80 C/P is designated would be eligible for a mothership endorsement only if the C/P was designated on a groundfish LLP license that has been credited with receiving and processing at least one mothership trip target of Pacific cod in the BSAI non-CDQ Pacific cod trawl CV directed fishery in each year from 2015 through 2017. The Council made this clarification to ensure that eligibility criteria for groundfish LLP licenses on which Amendment 80 and non-Amendment 80 C/Ps are designated are consistent. The Council also clearly understood that this approach would not change the number of non-Amendment 80 C/Ps that could operate as a mothership for BSAI Pacific cod in the future. This proposed rule would implement eligibility criteria for groundfish LLP licenses on which non-Amendment 80 C/Ps are designated, as clarified by the Council.

The second preferred alternative that would be implemented under Amendment 120 would also be implemented under Amendment 108. This preferred alternative would eliminate

the ability of any Amendment 80 C/P replaced under BSAI Amendment 97 from operating as a mothership in the fishery. Thus, any Amendment 80 sector C/P not designated on an Amendment 80 QS permit and an Amendment 80 LLP license, or not designated on an Amendment 80 LLP/QS license, would be prohibited from receiving and processing Pacific cod harvested in directed fishing for Pacific cod in the BSAI or GOA.

The Council determined, and NMFS agrees, that limiting the number of C/Ps operating as motherships in the BSAI non-CDQ Pacific cod trawl CV directed fishery is necessary to restore historical patterns of harvest delivery distribution between processing sectors. Reducing recent levels of deliveries to offshore processors and increasing deliveries to shoreside processors will ease the likelihood of harvesting pressure further shortening the fishing season, and mitigate the risk that a “race for fish” could continue to develop and accelerate. The Council also determined, and NMFS agrees, that this proposed rule would reasonably balance the need to limit the number of C/Ps operating as motherships in the BSAI non-CDQ Pacific cod trawl CV directed fishery with the need to provide continued access and benefits to long time participants with sustained activity in the fishery, including C/Ps operating in the fishery as motherships, shoreside processors, and fishery-dependent communities.

The Council determined, and NMFS agrees, that the proposed action would likely prevent the fishing season from shortening further, because it removes the ability for additional offshore processing capacity to enter the fishery and accelerate TAC harvest or reach PSC limits more quickly. Reaching the halibut PSC limit or harvesting Pacific cod allocations increasingly quickly results in increasingly earlier fishery closures. The Council noted, and NMFS agrees, that this proposed rule could ease NMFS’s inseason management challenges in gathering effort information to project when the seasonal allocations will be harvested. As described in Section

2.6.3 and 2.7.1 of the Analysis, the lengths of the A seasons in 2017 through 2019, when the bulk of the fishery's annual allocation is harvested, were the shortest on record for this fishery, and this trend was coincident with the highest numbers of C/Ps operating as motherships and highest levels of offshore deliveries compared to shoreside deliveries. The pace of fishing during those fishing seasons may have increased in part due to additional speculative entry and concerns by current participants about the increasing competition.

This proposed rule could help lengthen the fishing season and mitigate a “race for fish” by limiting the eligible groundfish LLP licenses for C/Ps operating as motherships, such that participation is generally representative of the levels seen from 2008 through 2015, when the A season lasted five weeks or longer. This proposed rule also would allow more flexibility in fishing operations by ensuring predictable levels of competition. That flexibility may help reduce PSC in the fishery and improve vessel safety, by allowing vessels to implement fishing practices known to reduce PSC and improve vessel safety. At a minimum, the proposed action is expected to minimize further negative impacts on C/Ps with long-term, sustained participation operating as motherships, as well as shoreside processors and associated fishery-dependent communities.

Under the LLP, a license can be transferred to a different vessel that is eligible to be designated on that LLP license. Although a vessel may be designated on more than one LLP license at one time, only one vessel can be designated on each LLP license at any given time. Therefore, the number of eligible groundfish LLP licenses presented in this proposed rule and the Analysis represents the maximum number of C/Ps that NMFS has determined would be eligible to receive and process Pacific cod in the BSAI non-CDQ Pacific cod trawl CV directed fishery. If Amendments 120/108 are approved and this rule is implemented, fewer and/or

different C/Ps designated on groundfish LLP licenses with a BSAI Pacific cod trawl fishery mothership endorsement may be used to receive and process Pacific cod in the BSAI non-CDQ Pacific cod trawl CV directed fishery. The Analysis uses the current groundfish LLP license vessel designations to describe the likely impacts of the proposed action, because it is not possible to know how the vessel designations on groundfish LLP licenses may change in the future or how those groundfish LLP licenses will be used in the fishery.

The Council considered a range of factors and options in determining what criteria would qualify a groundfish LLP license for a BSAI Pacific cod trawl CV fishery mothership endorsement, including: 1) how eligible mothership trip targets would be determined; 2) the range of years during which eligible mothership trip targets would need to be made (*i.e.*, qualifying period); 3) the number of years during the qualifying period in which eligible mothership trip targets would need to be made; 4) sideboards; and 5) a prohibition on replaced Amendment 80 C/Ps operating as motherships to receive and process Pacific cod deliveries harvested in directed fishing in the Pacific cod fisheries in the BSAI and GOA. In addition to other factors considered and addressed in the Analysis, the Council and NMFS considered the proposed action's consistency with allocations initially made under the Amendment 80 Program, and the proposed action's potential impacts on the BSAI AFA C/P and trawl CV Pacific cod fisheries. The following discussion briefly summarizes these options and key considerations.

*Why is the qualification for a BSAI Pacific cod trawl CV fishery mothership endorsement based on mothership trip targets rather than directed fishing?*

At its June 2018 meeting, the Council clarified that eligibility criteria should be based on mothership trip targets rather than directed fishing landings. Directed fishing is defined as any fishing activity that results in retention of an amount of a species on board a vessel that is greater

than the maximum retainable amount for that species (see definition at 50 CFR 679.2). Under this definition of directed fishing, a vessel may be targeting and retaining yellowfin sole but also retaining incidentally caught Pacific cod at an amount that exceeds the maximum retainable amount for Pacific cod. NMFS would consider the vessel to be directed fishing for yellowfin sole and directed fishing for Pacific cod in such a situation. Thus, limiting access of C/Ps acting as motherships to the BSAI directed non-CDQ Pacific cod trawl CV fishery based on a history of receiving and processing directed fishing landings of Pacific cod could result in C/Ps meeting eligibility criteria based on receiving and processing incidental catch of Pacific cod from trawl CVs.

Under this proposed rule, “mothership trip target” is defined as, in the aggregate, the groundfish species that is delivered by a CV to a given C/P acting as a mothership in an amount greater than the retained amount of any other groundfish species delivered by the same CV to the same C/P for a given week. The Council’s intent with this action is to provide endorsements to those C/Ps acting as motherships receiving and processing deliveries from trawl CVs that were intentionally targeting Pacific cod in the BSAI trawl CV fishery. The Council did not intend for this action to provide endorsements to C/Ps acting as motherships receiving and processing deliveries from trawl CVs that were intentionally targeting other groundfish species, but retaining their incidental catch of Pacific cod. Using mothership trip targets to determine eligibility would limit the potential for a C/P to qualify for participation in the BSAI non-CDQ Pacific cod trawl CV directed fishery as a mothership based on the vessel receiving and processing incidental catch of Pacific cod. This is consistent with previous uses of trip targets, rather than directed fishing activity, as eligibility criteria for limiting access to fisheries (*e.g.*, BSAI FMP Amendment 116; 83 FR 49994, October 4, 2018).

The Analysis presented to the Council explained that different numbers of groundfish LLP licenses would qualify for a BSAI Pacific cod trawl mothership endorsement depending on whether weekly production reports or fish tickets are used to determine which C/Ps received deliveries of targeted Pacific cod during the qualifying period. If weekly production reports from the qualifying period are used to determine receipt of targeted Pacific cod deliveries, then two groundfish LLP licenses would qualify for a BSAI Pacific cod trawl mothership endorsement. If fish ticket data are used, then three groundfish LLP licenses would be eligible to receive a BSAI Pacific cod trawl mothership endorsement. The record demonstrates that the Council understood that two groundfish LLP licenses would qualify for the endorsement under the preferred alternative. This suggests to NMFS that only weekly production reports should be used in determining qualification. Further, relying on weekly production report data would qualify the two C/Ps that have long-term, sustained participation as motherships in the fishery, which is also consistent with the Council's intent.

*Why was the range of qualifying years selected?*

The Council considered one range of years, 2015 through 2017, to define the qualifying period in which mothership trip targets of Pacific cod in the BSAI non-CDQ Pacific cod trawl CV directed fishery delivered to C/Ps operating as motherships would qualify a groundfish LLP license on which the C/P was designated for a mothership endorsement. This range includes the years directly before and after 2016, which was the year that five additional Amendment 80 C/Ps entered the BSAI non-CDQ Pacific cod trawl CV directed fishery as motherships, more than doubling the number of participating C/Ps operating as motherships in the fishery. There has not been the same increase in non-Amendment 80 C/P participation as motherships in the BSAI Pacific cod fishery during this same period. The increase in Amendment 80 C/Ps operating as

motherships resulted in the Council expressing concern about the increased amount of BSAI non-CDQ Pacific cod delivered offshore in the fishery, and the corresponding decrease in the amount delivered onshore. The Council considered including participation in the fishery prior to 2015, but determined that participation prior to 2015 was stable and represented sustained effort. The Council chose to end the qualifying period with 2017, because the Council initiated the Analysis for Amendments 120/108 in 2017 and announced its intent to limit the number of C/Ps operating as motherships based on activity occurring prior to December 31, 2017. Thus, the Council considered participation after 2017 to represent speculative entry into the fishery. Finally, these were the most recent three years of data available at the time the Council signaled its intent to limit the number of C/Ps operating as motherships in the BSAI non-CDQ Pacific cod trawl CV directed fishery, and a three-year qualifying period is consistent with the length of qualifying periods set in similar Council actions (*e.g.*, BSAI FMP Amendment 116; 83 FR 49994, October 4, 2018).

The Council was aware of the potential for additional effort to enter the BSAI non-CDQ Pacific cod trawl CV directed fishery while the Council developed and considered Amendments 120/108. The Council was also aware that additional or speculative effort could enter the fishery to establish some history in it, potentially impacting existing participants in the fishery by further shortening the fishing season and increasing the “race for fish” (see Section 2.6.3 of the Analysis for a description of fishing patterns and seasons), and further shifting the historical delivery patterns in this fishery from shoreside processors to offshore processors. To dampen the effect of additional or speculative entry into the BSAI non-CDQ Pacific cod trawl CV directed fishery, on December 9, 2017, the Council signaled its intent to establish eligibility criteria based on activity occurring prior to December 31, 2017. Although this date was not binding on future

Council actions, the Council clearly indicated at its December 2017 meeting that December 31, 2017 could be used as a reference date for a future management action to limit C/Ps from acting as motherships in the BSAI trawl catcher vessel Pacific cod fishery. In taking such action, the Council intended to promote awareness that the Council may develop a future management action; to provide notice to the public that any current or future mothership operations in the offshore sector of the BSAI non-CDQ Pacific cod trawl CV directed fishery may be affected or restricted; and to discourage speculative participation and behavior in the fishery while the Council considered whether to initiate a management action to further limit mothership participation in the fishery.

After the Council noted the recent increase of C/Ps operating as motherships in the fishery from three C/Ps in 2015 to eight C/Ps in 2016 and 2017, and signaled its intent to limit this activity in December 2017, the number of participating C/Ps acting as motherships increased to nine in 2018. The 2018 level was triple the maximum level of participation by C/Ps acting as motherships during any year from 2003 through 2015, and over four times the average level from 2003 through 2015. Because the Council identified in 2017 the recent increase in C/Ps acting as motherships in the fishery as a contributing factor to the increased pace of the fishery and shortened fishing seasons, the Council was concerned that the even greater increase in participation by C/Ps acting as motherships after 2017 would further shorten the fishing season. The Council believed that this would decrease the Council's ability to maximize the value of the fishery, and would negatively impact fishery participants and threaten the viability of the fishery. The selection of the 2015 through 2017 qualifying period is consistent with the Council's clearly stated policy objectives for this action.

*Why select a qualifying period of three years, not one or two years, for participation for*



*Amendment 80 and non-Amendment 80 C/Ps acting as motherships?*

In selecting the years 2015 through 2017 as the qualifying period, the Council considered the potential for future entry of capacity into the fishery, while also recognizing existing participation. For Amendment 80 C/Ps, the Council evaluated three levels of participation during the selected qualifying period to determine eligibility of groundfish LLP licenses on which Amendment 80 C/Ps are designated for the BSAI Pacific cod trawl mothership endorsement. The three sub-options considered by the Council required Amendment 80 C/Ps to receive and process a legal mothership trip target of Pacific cod in the BSAI non-CDQ Pacific cod trawl CV directed fishery in either: 1) one of the three years during the qualifying period, 2) two of three years, or 3) each of three years. The Council considered only one level of participation for non-Amendment 80 C/Ps during the selected qualifying period to determine eligibility for the BSAI Pacific cod trawl mothership endorsement, because a single groundfish LLP license on which only one non-Amendment 80 C/P is designated would qualify under any of the sub-options considered for Amendment 80 C/Ps. That level of participation was receiving and processing a legal mothership trip target of Pacific cod in the BSAI non-CDQ Pacific cod trawl CV directed fishery in any one of the three years. However, as noted above, the Council amended the recommended eligibility level of participation for non-Amendment 80 C/Ps to be consistent with the preferred sub-option for eligibility for a groundfish LLP license on which Amendment 80 C/Ps are designated to simplify regulations.

Section 2.7.2 of the Analysis details the number of groundfish LLP licenses that would and would not qualify for a BSAI Pacific cod trawl mothership endorsement for each of the options described above. Under the first sub-option described above, seven groundfish LLP licenses on which an Amendment 80 C/P was designated would be credited with at least one

mothership trip target of Pacific cod in the BSAI non-CDQ Pacific cod trawl CV directed fishery in each year of the qualifying period and therefore would be eligible to receive a BSAI Pacific cod trawl mothership endorsement. Twelve groundfish LLP licenses on which an Amendment 80 C/P was designated would not qualify for the endorsement under this sub-option. Under the second sub-option, six groundfish LLP licenses on which an Amendment 80 C/P was designated would be credited with at least one mothership trip target of Pacific cod in the BSAI non-CDQ Pacific cod trawl CV directed fishery in each year of the qualifying period, and therefore would be eligible to receive the endorsement. Thirteen groundfish LLP licenses on which an Amendment 80 C/P was designated would not qualify for the endorsement under the second sub-option. Under the third sub-option, selected by the Council as its preferred sub-option, one groundfish LLP license on which an Amendment 80 C/P was designated would be eligible to receive the endorsement. Eighteen groundfish LLP licenses on which an Amendment 80 C/P was designated would not qualify for the endorsement under the third sub-option.

Since only one non-Amendment 80 C/P received deliveries of BSAI directed, non-CDQ Pacific cod from trawl CVs in each year from 2015 through 2017, the groundfish LLP license on which that vessel was designated during the qualifying period is the only one that would be eligible for the BSAI Pacific cod trawl mothership endorsement under the terms of all of the sub-options established for the Amendment 80 C/Ps. The Council selected the one non-Amendment 80 option, Alternative 2, Option 2, as its preferred option to provide eligibility for the groundfish LLP license on which the one non-Amendment 80 C/P that operated in the fishery as a mothership was designated. The Council decided to exclude non-Amendment 80 true motherships from this action based on information showing minimal participation taking deliveries from the BSAI cod target fishery from 2008 through 2018, as noted in Section 2.6.14.5

of the Analysis.

The Council determined, and NMFS agrees, that the selected sub-option 3 for Amendment 80 C/Ps, and the selected option, as clarified by the Council, for non-Amendment 80 C/Ps would allow the fishery to be fully prosecuted without the risk of a continued increase in harvest pressure that could continue to shorten the fishing season or decrease deliveries to the shoreside processors. The Council did not choose the sub-options for one- or two-year participation requirements for groundfish LLP licenses on which Amendment 80 C/Ps were designated, because either option would have allowed participation in a manner that is not reflective of the historical harvest patterns in the fishery prior to the recent increase in Amendment 80 C/Ps acting as motherships. The selected eligibility criteria for groundfish LLP licenses are consistent with the Council's intent to provide continued access and benefits to C/Ps that had sustained participation operating as a mothership, as well as shoreside processors that historically accepted higher levels of Pacific cod deliveries in the fishery.

*Why restrict Amendment 80 C/Ps acting as motherships to only those designated on an Amendment 80 QS permit and an Amendment 80 LLP license or on an Amendment 80 LLP/QS license?*

Restricting Amendment 80 C/Ps operating as motherships in directed Pacific cod fisheries in the BSAI and GOA to only those designated on an Amendment 80 QS permit and an Amendment 80 LLP license or on an Amendment 80 LLP/QS license is intended to ensure that Amendment 80 C/Ps that are replaced under regulations promulgated under BSAI Amendment 97 (77 FR 59852; October 1, 2012) cannot be used to circumvent the intent of the proposed action. This ensures that both current and replaced Amendment 80 C/Ps are subject to the limitations placed on the fleet under this proposed rule. If an Amendment 80 C/P designated on

a groundfish LLP license that qualifies for the BSAI Pacific cod trawl mothership endorsement is replaced, the endorsement transfers with the Amendment 80 QS permit and LLP license or the combined QS permit/LLP license to the replacement vessel designated on the license and permit. This proposed provision thus eliminates the opportunity for both the replacement vessel and the replaced vessel to be used as a mothership in the BSAI non-CDQ Pacific cod trawl CV fishery. This provision expands the limitations of this proposed rule, which is otherwise focused on the BSAI non-CDQ Pacific cod trawl CV directed fishery, to include all mothership activity in the BSAI and GOA Pacific cod fisheries. This expansion reflects the Council's intent to prohibit the expanded use of those C/Ps once they exit the Amendment 80 program. If this proposed provision were not included in this proposed rule, a replaced Amendment 80 C/P would continue to be allowed to operate as a mothership and receive and process Pacific cod harvested by vessels directed fishing for Pacific cod, in addition to the C/P that replaced it. This proposed provision closes that potential loophole in the regulations and therefore meets the Council's intent of allowing only one Amendment 80 C/P and one non-Amendment 80 C/P to operate as a mothership in the BSAI non-CDQ Pacific cod trawl directed fishery in the future. Further, this approach is consistent with the Council's practice of limiting the ability of catch share program participants to increase participation in non-catch share fisheries and disadvantage historical participants in those fisheries. As discussed in Section 2.6.4 of the Analysis, AFA vessel replacement regulations prohibit replaced AFA vessels from operating as a mothership in the Pacific cod fisheries. Therefore, it is not necessary to include those vessels under this restriction.

*Why are no options needed to impose sideboards on C/Ps that qualify to operate as motherships in the BSAI non-CDQ directed fishery?*

As noted in the Analysis in Section 2.7.3.2, the Council determined that establishing a

limit on the amount of Pacific cod the two eligible C/Ps operating as motherships could receive, commonly known as a “sideboard,” would: increase management costs, increase management complexity for the Council and NMFS, and potentially increase the incidental catch of Pacific cod delivered to C/Ps that qualify for the BSAI Pacific cod trawl mothership endorsement. The Council and NMFS determined that these potential costs outweigh the benefits of implementing a sideboard. Further, public testimony indicated that there are operational constraints on a C/P’s ability to accept increases in Pacific cod deliveries, making sideboards unnecessary for limiting offshore deliveries. These constraints include space limitations, limits on freezing and processing capacity, and regulatory prohibitions on mixing tows in single tanks.

Section 2.7.3.2. of the Analysis states that without a sideboard, it would be possible for the C/Ps designated on a groundfish LLP license that qualifies under this proposed rule for an endorsement to operate as a mothership in this fishery to increase the amount of Pacific cod they accept from CVs in this fishery, but the potential amount of increase cannot be known with any certainty. This concern was expressed by the Council and some members of the public. However, because the C/Ps designated on a groundfish LLP license that would be eligible for a BSAI Pacific cod trawl mothership endorsement have been operating in a fishery where participants compete for a portion of the sector allocation, incentives exist to operate at capacity and as efficiently as possible. These incentives will remain in place under the proposed rule, since the C/Ps designated on an eligible groundfish LLP license will still compete with the shoreside and floating processors for a share of the fishery. Further, the Analysis (Section 2.10) and public testimony received on this issue clearly stated that imposing a sideboard would increase the complexity of the action and could result in a sideboard limit that would be confidential or too small to allow NMFS to open the fishery at the start of the A season. NMFS

could deem a sideboard to be too small to open the fishery if the sideboard amount could be harvested before NMFS received data in time to close the fishery before the sideboard was exceeded.

There is also the potential for negative impacts of a Bering Sea sideboard on both the Bering Sea and Aleutian Islands directed Pacific cod trawl fisheries. Under certain conditions a relatively small sideboard in the Bering Sea could result in increased effort in the Aleutian Islands, resulting in negative impacts on the shoreside processors in the Aleutian Islands. The Council determined, and NMFS agrees, that it was neither necessary nor appropriate to establish a sideboard in the Bering Sea for the two C/Ps designated on a groundfish LLP license that qualify for the BSAI Pacific cod trawl mothership endorsement. The impact in the Bering Sea of implementing a Bering Sea sideboard would primarily be a change in the distribution of harvest effort, but would be tempered because only two groundfish LLP licenses will qualify for the BSAI Pacific cod trawl mothership endorsement. Tightly limiting the number of C/Ps that qualify to operate as a mothership in the BSAI non-CDQ Pacific cod trawl CV directed fishery and not implementing a sideboard was the preferred management approach.

*How would this proposed action affect shoreside processors and associated communities?*

The increase in deliveries of BSAI non-CDQ Pacific cod from the trawl CV directed fishery to C/Ps operating as motherships has resulted in a corresponding decline in the amount of Pacific cod delivered to onshore processing facilities. The Council determined, and NMFS agrees, that these Pacific cod deliveries are an important financial component to Bering Sea inshore processing operations and fishery dependent communities in the BSAI: Dutch Harbor/Unalaska, King Cove, Akutan, Sand Point, St. Paul, Adak, Atka, and the Aleutians East Borough. For shoreside processing operations, Pacific cod is second only to pollock in terms of

volume, and these high-volume fisheries help ensure a more stable workforce in these remote communities and increase economic activity, as described in Sections 2.8.3 through 2.8.5 of the Analysis. Limiting the C/Ps that can operate as a mothership to only the historical participants is consistent with the objectives of this action to address the recent and rapid increase in deliveries of Pacific cod offshore and the resulting negative impacts to the shoreside processors and fishery-dependent communities, consistent with National Standard 8. The Council has utilized the best available economic and social data to evaluate the sustained participation of fishing communities.

*How would this action help reduce PSC rates?*

In fisheries where circumstances motivate fishermen to race against each other to harvest as much fish as they can before the annual catch limit or the PSC limit is reached and the fishery closes for the season, participants can have a substantial disincentive to take actions to reduce bycatch use and waste, particularly if those actions could reduce groundfish catch rates. In a “race for fish,” participants who choose not to take actions to reduce bycatch and waste stand to gain additional groundfish catch by continuing to harvest at a higher bycatch rate, at the expense of any vessels engaged in bycatch avoidance. By limiting processing capacity in the offshore sector of the BSAI non-CDQ pacific cod trawl CV directed fishery and reducing pressure to harvest the BSAI Pacific cod trawl CV allocation quickly, this proposed action would help to reduce incentives for a “race for fish” and provide participating CVs more flexibility in fishing operations, because participation in the fishery would be more stable and predictable over the long term, thereby allowing them to choose fishing operations that better avoid PSC (Section 2.7.1 and 2.8.2 of the Analysis).

This proposed rule would not affect annual halibut PSC limits, but it could help maintain

or reduce halibut PSC rates in the fishery. While such savings are not guaranteed or predictable, due to the suite of variables that can affect PSC rates, the proposed action addresses concerns that increases in the number of C/Ps operating as motherships could increase PSC rates during shorter fishing seasons at a time when Pacific cod Allowable Biological Catch (ABC) is declining in the Bering Sea, thus creating incentives to abandon fishing practices that have reduced halibut PSC (Section 2.8.2 of the Analysis). Additionally, PSC limits for this fishery would continue to be established each year under the process analyzed in the EA/RIR/IRFA for Amendment 111 (80 FR 71649, November 16, 2015) to the BSAI FMP (see **ADDRESSES**). The fishery would be closed if NMFS determines that any PSC limits will be reached before the Pacific cod allocation for this fishery is reached.

*Why change the policy on C/Ps operating as motherships as implemented under the Amendment 80 Program?*

As explained earlier in this preamble, the Council and NMFS recognized at the time Amendment 80 was implemented that participation by Amendment 80 vessels as motherships in the offshore BSAI TLAS fisheries could continue or even increase. However, the proportion of the BSAI non-CDQ Pacific cod trawl CV directed fishery catch now being harvested and delivered to Amendment 80 C/Ps operating as motherships is substantially greater than it was at the time the Amendment 80 Program was implemented.

The final rule for the Amendment 80 Program (72 FR 52668, September 14, 2007) that allowed Amendment 80 C/Ps to operate as motherships noted that only one Amendment 80 C/P was receiving and processing catch delivered from one non-Amendment 80 CV using trawl gear in the BSAI TLAS fishery prior to the implementation of the Amendment 80 Program. The 2008 final rule noted the practice of delivering unsorted catch from non-Amendment 80 CVs to



Amendment 80 C/Ps was not widespread at that time. The final rule also noted that permitting this practice was unlikely to create a significant shift in processing patterns away from shoreside processors based on data available at that time, particularly if then-current rates of delivery of unsorted BSAI TLAS catch from CVs to C/Ps operating as motherships for processing continued. Importantly, the final rule noted that NMFS could not predict the extent to which that practice might increase in the future or whether the practice would have adverse effects on existing processing operations (*i.e.*, shoreside processors). NMFS also stated that a review of processing operations by shoreside processors and Amendment 80 vessels could provide the basis for a future regulatory amendment should the Council identify and recommend additional changes to the Amendment 80 Program to address potential conflicts.

From 2003 through 2015, no more than two Amendment 80 C/Ps participated as motherships in the BSAI non-CDQ Pacific cod trawl CV directed fishery in any one year (Section 2.7.1 of the Analysis), and this participation rate was more or less in line with NMFS's previous expectations. However, in each year from 2016 through 2018, the practice of trawl CVs delivering non-Amendment 80 catch to Amendment 80 C/Ps operating as motherships expanded significantly, with six to seven Amendment 80 C/Ps and two AFA C/Ps operating as motherships in the BSAI non-CDQ Pacific cod trawl CV directed fishery.

The Council determined, and NMFS agrees, that it is appropriate to review the policies adopted for the BSAI TLAS fisheries under the Amendment 80 Program and the fishing operations in those fisheries, and take action, if necessary, as fishing patterns change from those observed at the time the Amendment 80 Program was implemented. As a result, the Council concluded, and NMFS agrees, at this time it is necessary to limit activity of C/Ps operating as motherships receiving and processing BSAI non-CDQ Pacific cod from CVs using trawl gear in

the directed fishery.

### **Proposed Action**

This proposed rule would implement Amendment 120 to the BSAI FMP and Amendment 108 to the GOA FMP. This proposed rule would establish eligibility criteria for, and a process to issue, a new endorsement to groundfish LLP licenses that would authorize C/Ps designated on those licenses to operate as a mothership and receive and process deliveries of Pacific cod in the BSAI non-CDQ Pacific cod trawl CV directed fishery. Regulations at 50 CFR 679.2 define a mothership as a vessel that receives and processes groundfish from other vessels. Any C/P that meets the mothership definition at § 679.2 or has a mothership designation on its Federal Fisheries Permit will be considered a mothership under this action. However, true motherships, other at-sea processors, and shoreside processors would not be restricted by this action.

Under this proposed action, NMFS would issue a BSAI Pacific cod trawl mothership endorsement to an Amendment 80 or non-Amendment 80 groundfish LLP license with Bering Sea or Aleutian Islands area and C/P operation endorsements if the groundfish LLP license is credited with receiving and processing at least one legal mothership trip target of Pacific cod in the BSAI non-CDQ Pacific cod trawl CV directed fishery in each year of the qualifying period from 2015 through 2017. Further, under this proposed rule, any Amendment 80 vessel not designated on an Amendment 80 QS permit and Amendment 80 LLP license or on an Amendment 80 LLP/QS license would be prohibited from receiving and processing Pacific cod harvested in the Pacific cod directed fishery in the BSAI and the GOA.

Based on the information provided in the Analysis and the official record, NMFS has determined that two groundfish LLP licenses would be eligible to be credited with at least one mothership trip target of Pacific cod in the BSAI non-CDQ Pacific cod trawl CV directed fishery

in each year of the qualifying period and receive a BSAI Pacific cod trawl mothership endorsement. One is an Amendment 80 groundfish LLP license and one is an AFA groundfish LLP license. Therefore, under this proposed rule, those two groundfish LLP licenses would be credited with at least one mothership trip target of Pacific cod in the BSAI non-CDQ Pacific cod trawl CV directed fishery in each year of the qualifying period and receive a BSAI Pacific cod trawl mothership endorsement. Based on NMFS's catch records, both were the sole groundfish LLP license on which a C/P that received and processed at least one mothership trip target of Pacific cod in the BSAI non-CDQ Pacific cod trawl CV directed fishery in each year of the qualifying period was designated during the qualifying period. As a result, NMFS anticipates that a total of two groundfish LLP licenses would receive a BSAI Pacific cod trawl mothership endorsement, resulting in up to two C/Ps that could operate as a mothership authorized to receive and process Pacific cod in the BSAI non-CDQ Pacific cod trawl CV directed fishery.

This proposed rule would not preclude a vessel without a BSAI Pacific cod trawl mothership endorsement from receiving and processing incidental catch of Pacific cod that is caught while participating in other directed fisheries. For example, a C/P without a BSAI Pacific cod trawl mothership endorsement could participate in the BSAI TLAS yellowfin sole directed fishery and receive and process directed catch of BSAI TLAS yellowfin sole with incidental catch of BSAI Pacific cod, provided that the vessel has met all applicable requirements to participate in the BSAI TLAS yellowfin sole directed fishery and the incidental catch of BSAI Pacific cod is at or under the maximum retainable amount (MRA) for Pacific cod. This proposed action would not preclude an Amendment 80 or a non-Amendment 80 vessel from participating as a C/P and processing its own catch in the BSAI non-CDQ Pacific cod trawl CV directed fishery. As noted above, it would not preclude a true mothership, other at-sea processor, or

shoreside processor from receiving and processing Pacific cod harvested by a CV using trawl gear in the BSAI non-CDQ Pacific cod directed fishery. Under this proposed rule, a C/P that does not have a BSAI Pacific cod trawl mothership endorsement would be prohibited from acting as a mothership and receiving and processing Pacific cod in the BSAI non-CDQ Pacific cod trawl CV directed fishery. The following sections of this preamble describe how NMFS proposes to determine a mothership trip target, credit trip targets to a groundfish LLP license, and issue BSAI Pacific cod trawl mothership endorsements.

#### *Determining and Crediting Mothership Trip Targets*

NMFS can determine which and how many landings were received by a vessel designated on a specific groundfish LLP license during a particular timeframe. “Landing” means offloading fish (see 50 CFR 679.2), and is used interchangeably with “deliveries” in the preamble of this proposed rule. Regulations at 50 CFR 679.4(k) require an LLP license holder to designate a specific vessel on which the license will be used. This requirement allows NMFS to credit vessel deliveries to a specific LLP license. NMFS also collects vessel delivery data in the form of weekly production reports from C/Ps operating as motherships, which include information on the species and amounts received. From these data, NMFS has created an official record with all relevant information necessary to determine legal mothership trip targets that can be credited to groundfish LLP licenses with a C/P designation.

The official record created by NMFS contains vessel delivery data and the groundfish LLP licenses to which those deliveries are credited. The official record includes the documentation of specific groundfish LLP licenses, including vessels designated on them, and other relevant information necessary to credit vessel deliveries to specific groundfish LLP licenses. NMFS presumes the official record is correct, and a person wishing to challenge the

presumptions in the official record would bear the burden of proof through an evidentiary and appeals process. Evidence of the number of mothership trip targets of Pacific cod in the BSAI non-CDQ Pacific cod trawl CV directed fishery is based on legally required production reports submitted to NMFS by C/Ps, as required by 50 CFR 679.5(c)(6).

In order for a groundfish LLP license to receive a BSAI Pacific cod trawl mothership endorsement and thus be authorized to receive and process deliveries of Pacific cod in the BSAI non-CDQ Pacific cod trawl CV directed fishery, NMFS must first determine that the groundfish LLP license is an eligible license, and then must determine that the eligible license can be credited with one or more mothership trip targets of Pacific cod in the BSAI non-CDQ Pacific cod trawl CV directed fishery for each year during the qualifying period. Under this proposed rule, NMFS would identify as eligible those groundfish LLP licenses with Bering Sea or Aleutian Islands area and C/P operation endorsements on which an Amendment 80 or non-Amendment 80 C/P was designated when the groundfish LLP license was used to receive and process at least one mothership trip target of Pacific cod in the BSAI non-CDQ Pacific cod trawl CV directed fishery during each year from 2015 through 2017.

Based on the official record, NMFS has identified two groundfish LLP licenses that would be eligible to be credited with at least one mothership trip target of Pacific cod in the BSAI non-CDQ Pacific cod trawl CV directed fishery for each year during the qualifying period. Neither of these groundfish LLP licenses had more than one C/P designated on it during the qualifying period. Therefore, NMFS would credit these two groundfish LLP licenses with at least one mothership trip target of Pacific cod in the BSAI non-CDQ Pacific cod trawl CV directed fishery for each year during the qualifying period under this proposed rule. NMFS proposes to list these two groundfish LLP licenses in Table 57 to part 679 to facilitate the

public's ability to review their catch records and determine if additional groundfish LLP licenses may be eligible to receive the endorsement. Additional groundfish LLP licenses may qualify for an endorsement through the proposed administrative adjudicative process described below. If a holder of a groundfish LLP license believes the groundfish LLP license would meet the eligibility criteria described above, but the license is not listed in proposed Table 57 to part 679, or if a license holder disagrees with a groundfish LLP license to which NMFS would assign the BSAI Pacific cod trawl mothership endorsement, the holder would have the opportunity to challenge NMFS's determination as described in the following section of this preamble.

*Proposed Notification and Appeals Processes for Issuing BSAI Pacific Cod Trawl Mothership Endorsements*

NMFS has determined the groundfish LLP licenses identified in proposed Table 57 can be credited with at least one mothership trip target of Pacific cod in the BSAI non-CDQ Pacific cod trawl CV directed fishery for each year during the qualifying period, based on the official record, and those groundfish LLP licenses would receive a BSAI Pacific cod trawl mothership endorsement. If BSAI Amendment 120 is approved and this action is implemented in a final rule, then, in accordance with the regulatory text of the final rule, NMFS would issue a notification of eligibility and a revised groundfish LLP license with a BSAI Pacific cod trawl mothership endorsement to the holders of the groundfish LLP licenses identified in proposed Table 57, using the address on record at the time the notification is sent.

For all those groundfish LLP licenses with an Amendment 80 or AFA, Bering Sea or Aleutian Islands area, and C/P operation endorsements, but not listed in proposed Table 57, NMFS would notify the holders that the groundfish LLP license is not eligible for a BSAI Pacific cod trawl mothership endorsement based on the official record, using the address on record at the

time the notification is sent. NMFS would provide the holder with an opportunity to submit information to NMFS to rebut the official record. NMFS would provide a single, 30-day evidentiary period, beginning on the date that notification is sent, for a groundfish LLP license holder to submit any information or evidence to demonstrate that the information contained in the official record is inconsistent with the holder's records.

A groundfish LLP license holder who submits claims that are inconsistent with information in the official record would have the burden of proving that the submitted claims are correct. NMFS would not accept claims that are inconsistent with the official record, unless they are supported by clear, written documentation. NMFS would evaluate all additional information or evidence submitted within the 30-day evidentiary period. If NMFS determines that the additional information or evidence proves that the groundfish LLP license holder's claims are correct, NMFS would amend the official record in accordance with that information or evidence. However, if, after the 30-day evidentiary period, NMFS determines that the additional information or evidence does not prove that the groundfish LLP license holder's claims were correct, NMFS would deny the claim. NMFS would notify the applicant that the additional information or evidence did not meet the burden of proof to overcome the official record through an initial administrative determination (IAD).

NMFS's IAD would indicate the deficiencies and discrepancies in the information or evidence that is submitted in support of the claim. NMFS's IAD would indicate which claims could not be approved based on the available information or evidence, and provide information on how an applicant could appeal an IAD. The procedure for appealing an IAD through NMFS's National Appeals Office is described at 15 CFR part 906 (79 FR 7056, February 6, 2014). During the pendency of an administrative adjudication leading to a final agency action,

NMFS would issue an interim (temporary, non-transferable) license to an applicant who was authorized to participate in the fishery as a mothership in the year before the IAD is issued and who makes a credible claim to eligibility for a BSAI Pacific cod trawl mothership endorsement. Such an applicant would be eligible for a non-transferable interim license pending the resolution of his or her claim pursuant to the license renewal provisions of 5 U.S.C. 558. The non-transferable, interim license would authorize the applicant to operate as a mothership and receive and process Pacific cod in the BSAI non-CDQ Pacific cod trawl CV directed fishery, and would be effective until final agency action on the appeal. At that time, the person who appealed would receive either a transferable license with the endorsement or a transferrable license without the endorsement, depending on the final agency action.

#### **Regulatory Changes Made by this Proposed Rule**

The following provides a brief summary of the regulatory changes that would be made by this proposed rule. In order to implement Amendments 120/108, this proposed rule would:

- 1) Add § 679.4(k)(15) to include the provisions that are necessary to qualify for and receive a BSAI Pacific cod trawl mothership endorsement;
- 2) Add § 679.7(i)(12) to prohibit the receipt and processing by a C/P operating as a mothership of Pacific cod harvested by CVs directed fishing for Pacific cod in the BSAI non-CDQ Pacific cod trawl CV directed fishery without a copy of a valid groundfish LLP license with a BSAI Pacific cod trawl mothership endorsement;
- 3) Add § 679.7(o)(3)(v) to prohibit the use of an Amendment 80 C/P to receive and process Pacific cod harvested from directed fishing in Pacific cod fisheries in the BSAI or GOA, if that C/P is not designated on an Amendment 80 QS permit and an Amendment 80 LLP license or on an Amendment 80 LLP/QS license; and



4) Add Table 57 to part 679 to list those groundfish LLP licenses NMFS has determined would be eligible, would be credited with at least one mothership trip target of Pacific cod in the BSAI non-CDQ Pacific cod trawl CV directed fishery for each year of the qualifying period, and would receive a BSAI Pacific cod trawl mothership endorsement.

### **Classification**

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendments 120/108 to the BSAI and GOA FMPs, respectively, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration of comments received during the public comment period.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

### *Regulatory Impact Review (RIR)*

An RIR was prepared to assess all costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). NMFS is recommending Amendments 120/108 and the regulatory revisions in this proposed rule based on those measures that maximized net benefits to the Nation. Specific aspects of the economic analysis are discussed below in the IRFA section.

### *Initial Regulatory Flexibility Analysis (IRFA)*

This IRFA was prepared for this proposed rule, as required by section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 603), to describe the economic impact this proposed rule, if adopted, would have on small entities. An IRFA describes why this action is being proposed; the objectives and legal basis for the proposed rule; the number of small entities to

which the proposed rule would apply; any projected reporting, recordkeeping, or other compliance requirements of the proposed rule; any overlapping, duplicative, or conflicting Federal rules; and any significant alternatives to the proposed rule that would accomplish the stated objectives, consistent with applicable statutes, and that would minimize any significant adverse economic impacts of the proposed rule on small entities. Descriptions of this proposed rule, its purpose, and the legal basis are contained earlier in this preamble and are not repeated here.

#### Number and Description of Small Entities Regulated by This Proposed Rule

This proposed rule would directly regulate the owners and operators of certain Amendment 80 and AFA C/Ps operating as motherships when receiving Pacific cod in the BSAI non-CDQ Pacific cod trawl CV directed fishery. The proposed action would also directly regulate the owners of Amendment 80 C/Ps that have been replaced under BSAI Amendment 97 (77 FR 59852, October 1, 2012) by prohibiting such vessels from operating as a mothership in the BSAI or GOA Pacific cod fisheries.

The thresholds applied to determine if an entity or group of entities are “small” under the RFA depend on the industry classification for the entity or entities. Businesses classified as primarily engaged in commercial fishing are considered small entities if they have combined annual gross receipts not in excess of \$11.0 million for all affiliated operations worldwide (50 CFR 200.2). The nine C/Ps that operated as motherships in 2018 (the most recent year of complete data) during some part of the BSAI non-CDQ Pacific cod trawl CV directed fishery operate primarily as C/Ps throughout the year in either AFA pollock fisheries or Amendment 80 fisheries; they are considered C/Ps for purposes of classification under this IRFA. Though C/Ps engage in both fish harvesting and fish processing activities, since at least 1993 NMFS Alaska

Region has considered C/Ps to be predominantly engaged in fish harvesting rather than fish processing. Under this classification, the threshold of \$11.0 million in annual gross receipts is the appropriate threshold to apply to identify any C/Ps that are small entities.

This proposed rule would directly regulate the activities of 19 Amendment 80 vessels owned by five companies. One of the 19 Amendment 80 C/Ps qualified for both the Amendment 80 and AFA programs. Additionally this proposed rule directly regulates the 21 AFA C/Ps that are eligible to fish for pollock under the provisions of the AFA. Not all of the 21 eligible AFA vessels participate in the harvesting of the Bering Sea pollock allocation. The 2018 Pollock Conservation Cooperative report indicates that 14 vessel owned by seven firms harvested the cooperative's pollock allocation in 2018. The owners of the remaining vessels leased their allocation within the cooperative. This action does not directly regulate three true AFA motherships that are defined under the AFA.

Analysis of directly regulated entity revenue to determine entity size as measured against the commercial fishing threshold of \$11.0 million must also consider ownership affiliations and other contractual affiliations of the entities, worldwide. This proposed rule directly regulates C/Ps in the Amendment 80 fleet and the AFA fleet. At present five firms are operating a total of 19 vessels in the Amendment 80 fleet. All five firms have revenue in excess of the small entity threshold based on ownership affiliations between vessels, and therefore are considered large entities for RFA purposes. All Amendment 80 firms owning permitted vessels are members in an Amendment 80 fishing cooperative, which is a cooperative affiliation via contractual arrangements. Similarly, 14 active AFA C/P vessels are owned by 7 firms and all are large entities. Additionally, the remaining AFA eligible entities are affiliated with participating AFA firms via contractual leasing agreements. The RFA requires consideration of affiliations

between entities for the purpose of assessing whether an entity is classified as small. The AFA pollock and Amendment 80 cooperatives are types of affiliation between entities. All of the AFA and Amendment 80 cooperatives have gross annual revenues that are substantially greater than \$11 million. Therefore, NMFS considers members in these cooperatives to be “affiliated” large (non-small) entities for RFA purposes. The eligible Amendment 80 and AFA entities are large entities based on those affiliations.

#### Impacts of this Action on Small Entities

Under this proposed rule, C/Ps acting as motherships in the BSAI non-CDQ Pacific cod trawl CV directed fishery would be limited to two vessels, and all remaining AFA and Amendment 80 C/Ps would not be permitted to operate as a mothership in this fishery even if retired from and/or replaced in either the AFA or Amendment 80 Programs. However, all of the directly regulated entities have been determined to be large entities via ownership, cooperative, or contractual affiliations. Thus there are no adverse impacts on directly regulated small entities.

Trawl CVs operating in the BSAI non-CDQ Pacific cod trawl CV directed fishery are not directly regulated by this action. However, limiting the mothership markets available to CVs could negatively impact the ex-vessel price some CVs receive and impact the profitability of the vessel and firm. Due to data limitations, definitive statements on overall net revenue of the CVs in the various sectors are not available, because they would be speculative given the available information. Furthermore, indirect adverse effects on participating CVs will be somewhat offset by improved vessel safety associated with reduced crowding in highly fished areas.

Shoreside processors are not directly regulated by this action but could be indirectly affected, as they would likely benefit from limits imposed on C/Ps. The intent of this action is to implement regulations that would limit the number of C/Ps acting as a mothership in the BSAI

non-CDQ Pacific cod trawl CV directed fishery and limit the amount of directed fishing deliveries of Pacific cod that can be processed by those C/Ps. These limitations on mothership activities will likely result in greater directed fishing deliveries to shoreside processing facilities. The communities that are home to these shoreside processors derive multiple benefits from economic activity related to vessel and processor activities, such as employment and income provided by the various sectors, business activity generated at fishery support services providers in the communities, and public revenues that derive from taxes on fishery related activities in the communities. Thus, indirect effects of this proposed rule on shoreside processing facilities and the communities they operate within are expected to be beneficial. However, we note that communities in which C/Ps have a strong presence could experience indirect negative effects, due to the proposed rule's limitations on motherships.

NMFS has determined that all directly regulated entities are large because of their ownership affiliations or contractual affiliations. Nonetheless, NMFS has prepared this IRFA, which provides potentially affected small entities, including those that are indirectly affected, with an opportunity to provide comments on this IRFA. NMFS will evaluate any comments received on the IRFA and may consider certifying under section 605 of the RFA (5 U.S.C. 605) that this action will not have a significant economic impact on a substantial number of small entities prior to publication of the final rule.

#### Description of Significant Alternatives Considered

The RFA requires identification of any significant alternatives to the proposed rule that accomplish the stated objectives of the proposed action, consistent with applicable statutes, and that would minimize any significant economic impact of the proposed rule on small entities. The Council considered a status quo alternative and three action alternatives with several options and

sub-options. The combination of options and sub-options under the action alternatives provided a reasonable range of potential alternative approaches to status quo management.

No significant alternatives were identified that would accomplish the stated objectives for limiting mothership activity in the BSAI non-CDQ Pacific cod trawl CV directed fishery consistent with applicable statutes, and that would minimize costs to potentially affected small entities more than the approaches of the preferred alternatives adopted in this proposed rule. NMFS and the Council considered four alternatives for action in this proposed rule. Alternative 1 is the no action alternative. This alternative would continue to allow non-Amendment 80 and Amendment 80 C/Ps to operate as motherships in the BSAI non-CDQ Pacific cod trawl CV directed fishery, and is inconsistent with the Council's purpose and need statement.

Alternative 2, along with Options 1, Sub-option 1.3, and Option 2, would provide the greatest limit on mothership activity, while recognizing historical participation. This alternative (and its options and sub-options), selected as the Council's preferred alternative, would allow one Amendment 80 C/P and one AFA C/P to act as a mothership to receive and process Pacific cod in the BSAI non-CDQ Pacific cod trawl CV directed fishery.

Alternative 3 would require a sideboard on the amount of Pacific cod delivered to C/Ps operating as motherships and only applies to the Bering Sea. The Council determined that the increased management costs, increased management complexity for the Council and NMFS, limited constraints a sideboard would have on the Bering Sea directed fishery, and the potential for increases in the incidental catch of Pacific cod delivered to C/Ps that do not qualify for a mothership endorsement outweighed the benefits of implementing a sideboard. As a result the Council determined that the preferred management approach would be to tightly limit the number of C/Ps that qualify to operate as a mothership rather than implementing a sideboard.

Alternative 4, also selected as the preferred alternative, is consistent with the intent of the Council to ensure that no loophole exists to allow Amendment 80 C/Ps replaced under BSAI Amendment 97 to operate as a mothership in the BSAI non-CDQ Pacific cod trawl CV directed fishery. Alternative 4 would also clarify the intent of the Council to prevent Amendment 80 C/Ps replaced under BSAI Amendment 97 from operating as a mothership by receiving and processing Pacific cod harvested by CVs directed fishing for Pacific cod in the BSAI or GOA. Not selecting Alternative 4 would have allowed expanded use of replaced Amendment 80 C/Ps to receive and process Pacific cod harvested by CVs directed fishing for Pacific cod in the BSAI or GOA.

#### Federal Rules that May Duplicate, Overlapping, or Conflict with the Proposed Action

No duplication, overlap, or conflict between this proposed action and existing Federal rules has been identified.

#### Projected Recordkeeping and Reporting Requirements

This proposed rule does not add additional reporting or recordkeeping requirements for the vessels that choose to submit an appeal. An appeal process exists for groundfish LLP license endorsement issuance. No small entity is subject to reporting requirements that are in addition to or different from the requirements that apply to all directly regulated entities. No unique professional skills are needed for the groundfish LLP license or vessel owners or operators to comply with the reporting and recordkeeping requirements associated with this proposed rule. This proposed rule would not implement or increase any fees that NMFS collects from directly regulated entities. The Analysis prepared for this action identifies no operational costs of the endorsement (see **ADDRESSES**).

#### *Collection-of-Information Requirements*

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval under a temporary new information collection, to be merged, after OMB approval, with existing OMB Control Number 0648-0334. The public reporting burden for the collection-of-information requirements in this proposed rule is estimated to average 4 hours per response to submit an appeal, which includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding 1) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; 2) the accuracy of the burden estimate; 3) ways to enhance the quality, utility, and clarity of the information to be collected; and 4) ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS Alaska Region at the **ADDRESSES** above, and by e-mail to *OIRA\_Submission@omb.eop.gov* or fax to (202) 395-5806.

Notwithstanding any other provision of law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at [http://www.cio.noaa.gov/services\\_programs/prasubs.html](http://www.cio.noaa.gov/services_programs/prasubs.html).



## **List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Reporting and recordkeeping requirements

Dated: September 18, 2019.

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Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

### **PART 679--FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

1. The authority citation for part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447; Pub. L. 111–281.

2. In § 679.4, add paragraph (k)(15) to read as follows:

#### **§ 679.4 Permits.**

\* \* \* \* \*

(k) \* \* \*

(15) *BSAI Pacific cod trawl mothership endorsement*—(i) *General*. In addition to other requirements of this part, a vessel must be designated on a groundfish LLP license that has a BSAI Pacific cod trawl mothership endorsement in order to receive and process Pacific cod harvested and delivered by a catcher vessel directed fishing using trawl gear in the BSAI non-CDQ Pacific cod fishery as specified in § 679.20(a)(7)(ii)(A). A vessel designated on a groundfish LLP license with Bering Sea or Aleutian Islands area, catcher/processor operation, and BSAI Pacific cod trawl mothership endorsements may operate as a mothership, as defined at § 679.2, to receive and process Pacific cod harvested by a catcher vessel fishing in the BSAI non-CDQ Pacific cod trawl catcher vessel directed fishery as specified in § 679.20(a)(7)(ii)(A).

(ii) *Eligibility requirements for a BSAI Pacific cod trawl mothership endorsement*. A groundfish LLP license is eligible to receive a BSAI Pacific cod trawl mothership endorsement if the groundfish LLP license:

(A) Has Bering Sea or Aleutian Islands area and catcher/processor operation endorsements;

(B) Had a vessel designated on it that received and processed at least one legal mothership trip target of Pacific cod delivered by catcher vessels directed fishing using trawl gear in the BSAI non-CDQ Pacific cod trawl catcher vessel fishery as specified in § 679.20(a)(7)(ii)(A) in each of the three years of the qualifying period of 2015 through 2017, inclusive, where a mothership trip target is, in the aggregate, the groundfish species that is delivered by a catcher vessel to a given catcher/processor acting as a mothership in an amount greater than the retained amount of any other groundfish species delivered by the same catcher vessel to the same catcher/processor for a given week; and

(C) Is credited by NMFS with receiving a legal mothership trip target specified in

paragraph (k)(15)(ii)(B) of this section.

(iii) *Explanations for BSAI Pacific cod trawl mothership endorsement.* (A) NMFS will determine whether a groundfish LLP license is eligible to receive a BSAI Pacific cod trawl mothership endorsement under paragraph (k)(15)(ii) of this section based only on information contained in the official record described in paragraph (k)(15)(iv) of this section.

(B) NMFS will credit a groundfish LLP license with a legal mothership trip target specified in paragraph (k)(15)(ii)(B) of this section if that groundfish LLP license was the only groundfish LLP license on which the vessel that received and processed legal mothership trip targets was designated from 2015 through 2017.

(C) Mothership trip targets will be determined based on round weight equivalents.

(iv) *Official record of participation in the BSAI non-CDQ Pacific cod trawl catcher vessel fishery.*

(A) The official record will contain all information used by the Regional Administrator that is necessary to administer the requirements described in paragraph (k)(15) of this section.

(B) The official record is presumed to be correct. A groundfish LLP license holder has the burden to prove otherwise.

(C) Only legal landings as defined in § 679.2 and documented on NMFS production reports will be used to determine legal mothership trip targets under paragraph (k)(15)(ii)(B) of this section.

(v) *Process for issuing BSAI Pacific cod trawl mothership endorsements.* (A) NMFS will issue to the holder of each groundfish LLP license with Bering Sea or Aleutian Islands area and catcher/processor operation endorsements, and specified in Column A of Table 57 of this part, a notice of eligibility to receive a BSAI Pacific cod trawl mothership endorsement and a revised

groundfish LLP license with a BSAI Pacific cod trawl mothership endorsement.

(B) NMFS will issue to the holder of a groundfish LLP license with Bering Sea or Aleutian Islands area and catcher/processor operation endorsements, and that is not listed in Table 57 of this part, a notice informing that holder that the groundfish LLP license is not eligible to be credited with at least one legal mothership trip target of Pacific cod in the BSAI non-CDQ Pacific cod trawl CV directed fishery for each year during the qualifying period or receive a BSAI Pacific cod trawl mothership endorsement based on the official record, using the address on record at the time the notice is sent. The notice specified in this paragraph will inform the holder of the groundfish LLP license of the timing and process through which the holder can provide additional information or evidence to amend or challenge the information in the official record of this section, as specified in paragraphs (k)(15)(v)(C) and (D) of this section.

(C) The Regional Administrator will specify by notice a 30-day evidentiary period during which an applicant may provide additional information or evidence to amend or challenge the information in the official record. A person will be limited to one 30-day evidentiary period. Additional information or evidence received after the 30-day evidentiary period specified in the letter has expired will not be considered for purposes of the initial administrative determination (IAD).

(D) The Regional Administrator will prepare and send an IAD to the applicant following the expiration of the 30-day evidentiary period, if the Regional Administrator determines that the information or evidence provided by the person fails to support the person's claims and is insufficient to rebut the presumption that the official record is correct, or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of his or her 30-day evidentiary period. The IAD will

indicate the deficiencies with the information or evidence submitted. The IAD will also indicate which claims cannot be approved based on the available information or evidence. A person who receives an IAD may appeal pursuant to 15 CFR part 906. NMFS will issue a non-transferable interim license that is effective until final agency action on the IAD to an applicant who avails himself or herself of the opportunity to appeal an IAD and who has a credible claim to eligibility for a BSAI Pacific cod trawl mothership endorsement.

\* \* \* \* \*

3. In § 679.7, add paragraphs (i)(12) and (o)(3)(v) to read as follows:

**§ 679.7 Prohibitions.**

\* \* \* \* \*

(i) \* \* \*

(12) *Prohibitions specific to directed fishing in the BSAI non-CDQ Pacific cod trawl catcher vessel fishery as specified at § 679.20(a)(7)(ii)(A).* Receive and process Pacific cod harvested and delivered by a catcher vessel directed fishing using trawl gear in the BSAI non-CDQ Pacific cod fishery without a legible copy on board of a valid groundfish LLP license with Bering Sea or Aleutian Islands area, catcher/processor operation, and BSAI Pacific cod trawl mothership endorsements.

\* \* \* \* \*

(o) \* \* \*

(3) \* \* \*

(v) Use an Amendment 80 catcher/processor, as defined at § 679.2 of this part, to receive and process Pacific cod harvested by vessels directed fishing for Pacific cod in the BSAI or

GOA, if that catcher/processor is not designated on:

(A) An Amendment 80 QS permit and an Amendment 80 LLP license; or

(B) An Amendment 80 LLP/QS license.

\* \* \* \* \*

4. Adding Table 57 to part 679 to read as follows:

**Table 57 to Part 679—Groundfish LLP Licenses with Bering Sea or Aleutian Islands area and Catcher/Processor Operation Endorsements Eligible for a BSAI Pacific Cod Trawl Mothership Endorsement.**

[X indicates that Column A applies]

Column A	Column B
The Holder of Groundfish License Number . . .	Is eligible under 50 CFR 679.4(k)(15)(ii) to be assigned a BSAI Pacific Cod Trawl Mothership Endorsement.
LLG 5009	X
LLG 4692	X

[FR Doc. 2019-20552 Filed: 9/26/2019 8:45 am; Publication Date: 9/27/2019]